

R. v. MONA alias NAILOSI.

CRIMINAL REVIEW CASE No. 80 OF 1938.

Assault occasioning actual bodily harm—Penal Code section 220—accused not defended—defence of insanity introduced by Court—accused found guilty but insane—special finding quashed and proceedings remitted for Court to pass sentence in ordinary way.

In practice, the defence of insanity is not raised except where the penalty of death may be inflicted; see Halsbury: *Laws of England*, original edition, Vol. 9, para. 515, note (e) and Taylor's *Medical Jurisprudence*, Vol. I, p. 820. Where an accused person is found guilty but insane His Excellency the Governor may order that he be confined during His Excellency's pleasure in a lunatic asylum, prison or other suitable place of safe custody; see Criminal Procedure Code, section 153. As His Honour the Chief Justice observes in the judgment reported below a person in respect of whom such an order is made is in effect ordered to be detained for an indeterminate period.

Francis, C.J.: This is a case in which the accused, Mona alias Nailosi, was convicted before the Subordinate Court II, Fort Jameson, of an offence of aggravated assault contrary to Penal Code, section 220. The Magistrate recorded a special finding that the accused was guilty but insane, and thereafter reported the proceedings under Criminal Procedure Code, section 153.

His judgment is as follows:

"The facts of the case are not in dispute. The defence is one of insanity and the Court has no hesitation in accepting this defence. As regards his present state of mind while the medical evidence is quite definite as to lunacy there is also no doubt that accused is enjoying a lucid interval. He has understood all the proceedings and his replies have been normal though his unusual demeanour has been noted. There have been no grounds at any point in the Court proceedings for postponing the case under section 151 (2) of the Criminal Procedure Code."

On being called upon to plead the accused made a short statement which in effect amounted to a plea of "guilty", but added that he did not know why he stabbed the complainant. The Magistrate entered a plea of "not guilty" because as he recorded "there was some doubt as to the accused's sanity". How this doubt entered the Magistrate's mind is not indicated, as no evidence up till then was led upon the subject.

For the prosecution one witness was called—the complainant—who related the circumstances, apparently not in dispute.

For the defence two witnesses were heard—one the medical officer, and the other a native witness who had been present at the assault. Ordinarily such a witness would have been called for the prosecution.

It would seem that at the stage when the defence was entered upon the Court appeared to think that it would be in the interests of the accused that a defence of insanity should be set up, and accordingly the nature of the evidence led from the two witnesses for the defence was towards this end. Indeed, the medical witness concluded his evidence by saying that he was prepared to certify the accused as a lunatic.

The bona fides of the Magistrate in proceeding thus is not questioned, but I cannot believe that any lawyer charged with the interests of this accused would have adopted such a defence. On conviction of the offence here charged (a misdemeanour) a Court in imposing punishment would take into consideration all attendant circumstances including the gravity of the offence and the accused's previous history. Before a Court applying itself judicially, it is possible that in this case no very severe punishment would have ensued; but directly a special finding of "guilty but insane" is recorded an order of indefinite detention as a criminal lunatic is the result—a very different matter.

In an event under Penal Code, section 13, for a defence of insanity to prevail it must be proved affirmatively and conclusively by the defence that "*at the time of doing the act the accused was, through disease affecting his mind, incapable of understanding what he was doing or of knowing that he ought not to do the act*". The section goes on further to provide that a person is criminally responsible although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above referred to. The Magistrate's attention is invited to the rules in *McNaughton's case (Archbold)*. I can find no evidence before the Magistrate that this proof has been established. Evidence of insanity antecedent or subsequent is of course relevant to prove mental state at the time of the offence but is not conclusive proof in satisfaction of section 13.

For the reasons given above I find myself unable to report the proceedings to the Governor. The conviction, however, is maintained but the special finding quashed, and the proceedings are to be returned to the Court with the order that the accused be brought up for punishment in the ordinary way. Thereafter it will be open to the executive or prison authority as the case may be, to move in accordance with the law in such cases on the strength of the medical officer's opinion.